

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

RAY A. REVEL,)
)
 Plaintiff)
)
 v.) Civil Action No. 00-421-KAJ
)
 GOVERNOR THOMAS CARPER’S)
 FORCE, “OPERATION SAFE STREETS,”)
 JANE M. BRADY, WAYNE H. WARREN,)
 DAVID ELLINGSWORTH, and ED)
 CHAFFEY,)
)
 Defendants.)

MEMORANDUM ORDER

The Plaintiff, Ray A. Revel, is a *pro se* litigant. Presently pending before the Court are Revel’s Motions for Appointment of Counsel (Docket Item [D.I.] 40, 52, and 53). For the reasons that follow, Plaintiff’s Motion is DENIED.

Plaintiff alleges that Officer Wayne H. Warren deprived him of his Fourth Amendment right to be free of excessive force on arrest. (D.I. 19.) Plaintiff states that after he was arrested, he was placed into the back seat of a patrol car. (D.I. 19.) Plaintiff alleges that as he was sitting in the patrol car, Officer Warren opened the door, leaned in, and began choking him by placing his forearm across his throat, while stating, “I’m not afraid of you [expletive deleted].” (D.I. 19.) Plaintiff asserts that he was choked in this manner for approximately forty seconds. Officer Warren denies that this event took place. (D.I. 26 at 5.)

A plaintiff has no constitutional or statutory right to the appointment of counsel in a civil case. *See Parham v. Johnson*, 126 F.3d 454, 456-57 (3d Cir. 1997); *Tabron v. Grace*, 6 F.3d 147, 153-54 (3d Cir. 1993). Under certain circumstances, the Court may in its discretion appoint an attorney to represent an indigent civil litigant. *See* 28 U.S.C. § 1915 (e)(1).

In *Tabron* and again in *Parham*, the Third Circuit Court of Appeals articulated the standard for evaluating a motion for appointment of counsel filed by a *pro se* plaintiff. Initially, the court must examine the merits of a plaintiff's claim to determine whether it has some arguable merit in fact and law. *See Parham*, 126 F.3d at 457 (citing *Tabron*, 6 F.3d at 157); *accord Macklin v. Freaque*, 650 F.2d 885, 887 (7th Cir. 1981) (per curiam) (cited with approval in *Parham* and *Tabron*). Only if the Court is satisfied that the claim is factually and legally meritorious should it then examine the following factors: (1) the plaintiff's ability to present his/her own case; (2) the complexity of the legal issues; (3) the extensiveness of the factual investigation necessary to effectively litigate the case and the plaintiff's ability to pursue such an investigation; (4) the degree to which the case may turn on credibility determinations; (5) whether the testimony of expert witnesses will be necessary; and (6) whether the plaintiff can attain and afford counsel on his/her own behalf. *See Parham*, 126 F.3d at 457-58 (citing *Tabron*, 6 F.3d at 155-56, 157 n.5). This list is illustrative and by no means exclusive. *See id.* At 458. Nevertheless, it provides a sufficient foundation for the Court's decision.

While I believe that Plaintiff's claim is not frivolous within the meaning of 28 U.S.C. §§ 1915 (e)(2)(B) - 1915 (b)(1), I do not believe that Plaintiff meets the remaining *Parham* and *Tabron* factors. First, despite Plaintiff's inability to attain or afford counsel on his own behalf, Plaintiff has presented his case in a clear and concise manner. It appears from the allegations and the record before the Court that he does not need assistance gathering facts to support his claim. Additionally, the Court finds that the issues, as currently presented, are not legally or factually complex. While the case may turn on credibility determinations, this factor alone does

not determine whether counsel should be appointed. Finally, it does not seem that the testimony of expert witnesses will be required. Therefore, the Court declines to appoint counsel at this stage in the litigation.

For the reasons set out above,

IT IS HEREBY ORDERED as follows:

Plaintiff's Motion for Appointment of Counsel (D.I. 40, 52, and 53) is DENIED.

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

March 2, 2004
Wilmington, Delaware